August 15, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *August 1, 2003 "Response" of the Office of the Governor of the Commonwealth of the Northern Mariana Islands to July 18, 2003 Letter of Pacific Telecom Inc. and Bell Atlantic New Zealand Holdings, Inc.; IB Docket No. 03-115*

Dear Ms. Dortch:

This letter is submitted on behalf of Pacific Telecom Inc. ("Pacific Telecom" or "PTI") and Bell Atlantic New Zealand Holdings, Inc. ("BANZHI") (collectively, the "Joint Applicants") in response to the "Response" dated August 1, 2003, filed on behalf of the Office of the Governor of the Commonwealth of the Northern Mariana Islands ("Office of the CNMI Governor").[1]

47 C.F.R. § 1.763(b) Does Not Mandate A Trial-Type Hearing At The Request Of The Governor

In its most recent filing, the Office of the CNMI Governor once again demanded a trial-type hearing, claiming for the first time that a trial-type hearing is "a matter of right" in a Section 214 transfer of control proceeding pursuant to 47 C.F.R. § 1.763(b).[2] The rules of the Federal Communications Commission ("FCC" or "Commission") concerning transfers of control, however, do not mandate a trial-type hearing at the request of a Governor. Moreover, Commission precedent clearly states that Rule 1.763(b) does not require the Commission to hold

[1] This letter addresses only the Office of the CNMI Governor's new claim of a right to a hearing under Section 1.763(b), 47 C.F.R. § 1.763(b). The record is already replete with PTI's and BANZHI 's positions with respect to the remainder of the topics covered in the August 1, 2003 Response of the Office of the CNMI Governor.

[2] *See* Letter from Thomas K. Crowe, Counsel for the Office of the CNMI Governor, to Marlene H. Dortch, FCC, at 2 (Aug. 1, 2003).

an oral argument or a trial-type hearing even if a Governor requests one.[3] The FCC unequivocally has held that a Governor's right to be "heard" in Section 214 authorization proceedings under Rule 1.763(b) is satisfied by affording Governors the opportunity to file comments on pending Section 214 applications:

> In accordance with Section 214(a) of the Act and Section 1.763(b) of the Commission's Rules, the [Governor of the] Commonwealth [of Puerto Rico] was provided an opportunity to submit its arguments and evidence. It apparently believes it should be afforded a trial-type hearing, rather than the notice and comment hearing that was held. Neither Section 214 nor the underlying legislative history defines the term "heard." We find nothing in the statutory purpose of Section 214 which would require the Commission to hold or conduct a trial-type hearing where, as here, such a proceeding would be a useless exercise where no material questions of fact are in controversy.[4]

In this instance, the Commission has afforded the Office of the CNMI Governor every opportunity to participate in the notice and comment hearing. The Office of the CNMI Governor has taken full advantage of these opportunities by submitting not only a timely Petition to Deny but, after the pleading cycle established in the FCC's public notice for IB Docket No. 03-115 had ended,[5] three additional filings in letter form in which the Governor both supplemented its legal arguments and submitted allegedly pertinent new information.[6] As such, the rights of the Office of the CNMI Governor under Section 1.763(b) have been fulfilled:

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[3] *In the Matter of American Telephone and Telegraph Company Acquisition of ITT Communications Services, Inc. Subsidiaries*, Memorandum Opinion and Order, 2 FCC Rcd 3948, 3952-3953 (1987) ("*AT&T Acquisition*").

[4] *Id.*, 2 FCC Rcd at 3952.

[5] Commission Seeks Comment On Applications For Consent To Transfer Control Filed By Bell Atlantic New Zealand Holdings, Inc. And Pacific Telecom Inc., DA 03-1532, May 9, 2003 (pleading cycle established ending June 24, 2003).

[6] *See* Petition of the Office of the Governor of the Commonwealth of the Northern Mariana Islands to Deny, Or, In The Alternative, To Designate For Hearing, IB Docket No. 03-115, File No. ISP-PDR-20030418-00012 (June 9, 2003); Letter from Thomas K. Crowe, Counsel to the Office of the CNMI Governor, to Marlene H. Dortch, FCC (June 10, 2003); Reply of the Office of the Governor of the Commonwealth of the Northern Mariana Islands to Joint Opposition of Pacific Telecom Inc. and Bell Atlantic New Zealand Holdings, Inc., IB Docket No. 03-115 (July 2, 2003); Letter from Thomas K. Crowe, Counsel for the Office of the CNMI Governor, to Marlene H. Dortch, FCC (supplying new information) (Aug. 1, 2003); and Response of the Office of the Governor of the Commonwealth of the Northern Mariana Islands to July 18, 2003, Letter of Pacific Telecom Inc. and Bell Atlantic New Zealand Holdings, Inc.; IB Docket No. 03-115 (Aug. 1, 2003).

> [W]here parties requesting a hearing are provided a full opportunity to submit written pleadings and to present and refute evidence, and where nothing in the record suggests that a trial-type hearing would produce additional facts that might change the result, the Commission routinely grants Section 214 applications without holding trial-type hearings which had been sought by parties to those proceedings.[7]

Accordingly, consistent with agency rules and precedent, the Commission should deny the Governor's request for a trial-type hearing under Rule 1.763(b).[8]

Please contact the Joint Applicants' undersigned attorneys if you have any questions.

Respectfully submitted,

/s/

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[7] *AT&T Acquisition*, 2 FCC Rcd at 3952 (citation omitted).

[8] *Id.*

CERTIFICATE OF SERVICE

I, Felicia Lane, a legal secretary at Wilkinson Barker Knauer, LLP certify that on August 15, 2003, the foregoing was served on all parties listed below by hand delivery (indicated by asterisk) and US. mail, first class, postage prepaid.

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